

# Office Action Summary

Application No.  
09/468,889

Applicant(s)

POUNDERS JR.

Examiner

Kent L. Bell

Art Unit

1661

The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to ~~communications~~(s) filed on application filed December 22, 1999
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) ☐ Interview Summary (PTO 413) Paper No(s) \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

K. L. Bell

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**Detailed Action**

**Status of Application**

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1661.

**Drawing Notification**

The submitted photographic illustrations have been objected to by an Official Draftsperson under 37 CFR 1.165(a) for the reason(s) set forth on the attached PTO-948. By way of explanation, the paper which the photographic illustrations is mounted is of insufficient weight (37 CFR 1.84(b)) and the top margin width is not the appropriate size (37 CFR 1.84(g)). The proper margin widths are : Top- 2.5 cm, Left- 2.5 cm, Right- 1.5 cm, and Bottom- 1.0cm. Applicant should submit photographic illustrations mounted on paper that complies with 37 CFR 1.84(b) with the proper margin widths that comply with 37 CFR 1.84(g). Upon submission of the new photographic illustrations, applicant should cancel the originally filed photographic illustrations.

**Title**

The title must relate to The Plant (MPEP 1610). The following title is suggested:

✓ --ILEX HYBRID PLANT NAMED 'XIA YEN'--.

In The United States Patent and Trademark Office

"Application to Patent"

APPLICATION OF CECIL T. POUNDERS, JR.

For: ILEX HYBRID PLANT NAMED 'XIA YEN'

## SUMMARY OF THE INVENTION

My invention is a unique ornamental type of *Ilex* selected by me from a second generation group of open pollinated seedlings of *Ilex* X *attenuata* (*I. opaca* X *I. cassine*).

My goal was to select a tough ornate shrub combining *I. cassine*'s fine leaf texture and uniform branching with *I. opaca*'s better leaf color and tolerance of cold and moisture stress. This invention incorporates the desired traits from the original species differentiating it from all other forms of *Ilex* of which I am aware. The new clone has been named the Xia Yen variety.

The variety exhibits the following combination of traits:

- (a) lustrous evergreen leaves intermediate in texture between leaves of the two parental species,
- (b) balanced, vigorous pyramidal crown without extensive shearing due to strong apical dominance,
- (c) annual crops of bright red fruit in early fall which remain until spring,
- (d) environmental tolerances equivalent to *I. opaca*.

Xia Yen was selected as a superior replacement for *Ilex* X *attenuata* 'Foster #2' (unpatented), a holly selection extensively planted in the southern United States. Under production conditions Xia Yen is self-branching with strong apical dominance which reduces production cost when compared to Foster holly while in landscapes Xia Yen displays superior leaf color and more symmetric branching. Xia Yen resembles Foster #2 Holly's leaf texture and crown shape more than Xia Xiang (U.S. Plant Patent No. 10526) and Huo Yen (U.S. Plant Patent No. 11,741) Hollies do.

My new variety, Xia Yen, has been asexually propagated by soft-wood cuttings at Mobile, Decatur and Loxley, Alabama. Propagules demonstrated that the distinctive combination of characteristics are fixed and reproduce true to type to successive generations.

Xia Yen is being marketed bearing the DIXIE STAR HOLLY trademark.

#### BRIEF DESCRIPTION OF THE PHOTOGRAPHS

The accompanying photographs show typical plants of my new variety of Ilex during fall and early winter as depicted in color as true as is reasonably possible to make the same in color photographs of the character. The specimens illustrated were being grown in the ground at Decatur, AL and in nursery containers at Loxley, AL.

FIG. 1 illustrates shape, size and color of fruit and foliage,  
FIG. 2 illustrates plant uniformity under nursery conditions.

#### DETAILED DESCRIPTION

The following is a detailed description of my new variety of Ilex made from observation of 7 year old plants growing in the ground at Baldwin County, AL. Color terminology is in accordance with the R.H.S. Colour Chart of the Royal Horticultural Society, London, England.

Class: *Ilex X attenuata*

Parentage: Unknown

Foliage:

Type.-Evergreen, glossy, coriaceous. Leaves elliptic-lanceolate, serrate with minute spine-tipped teeth; Bases narrowly tapered, apices acute.

Size.-leaf size is affected by environmental factors such as light intensity and plant nutrition. Leaf size ranges from 4-6 cm long and 1-2 cm wide.

Petiole.-Ranges from 7 to 9 mm in length, grooved, color Greyed Red Group 178B.

Color.- Upper surfaces of mature leaves are closest to Green Group 137A; lower surface Green Group 138B.

Stems:

Size.-Stem length, width and internode length are under strong environmental control, increasing with favorable fertility and moisture or decreased light.

Color.-On new growth stems are Greyed Purple 187A, maturing to Greyed Green Group 197A. Bark on trunks and branches is Black Group 202D.

Inflorescence and Fruit:

Flowers.- Pistillate, usually solitary in leaf axils or at nodes just below leaves on initial spring growth;

sepals 4, petals 4; colored Orange White Group 159D on both surfaces. All other floral morphology such as petal and sepal shape, length, width and margins has been observed to be typical of *Ilex X attenuata*.  
Reproductive Organs.- Pistillate flowers are typical of female forms of *Ilex X attenuata*.  
Fruit.-Drupe containing 4 woody pyrenes; ellipsoid; approximately 8 to 11mm in diameter.  
Fruit color.- Dull to semi-glossy, Red Group 46B.

Plant growth characteristics:

Plants have a slender conical growth habit with seven year individuals growing to roughly 3 m in height and 1 m in width. Without pruning, growth slows but continues proportionally with 15 year individuals generally in the range of 4 to 6 m in height, 1.5 to 2.5 m in width, and main trunk diameter of 4 to 8 cm depending on growing conditions such as moisture, soil fertility and light intensity to which 'Xia Yen' is exposed during growth. Branching is symmetrical without extensive pruning with plants establishing a dominant central trunk. Xia Yen produces adequate annual crops of colorful red berries but does not fruit as heavily as Huo Yen holly. This variety's merit is a unique combination of lustrous dark green leaves and red fruit in combination with superior plant form.

Environmental tolerance:

Testing to date indicates that Huo Yen successfully combines textural qualities of *Ilex cassine* with the environmental adaptations of *Ilex opaca*. This new variety is adapted to the same landscape

conditions and climatic range associated with *I. opaca*. Parental species have the same pest problems thus no improved pest tolerance has been observed.

I claim:

1. A new and distinct variety of *Ilex X attenuata* plant named 'Xia Yen', as illustrated and described particularly as to the unique combination of:

- (a) annual abundant crops of fruit maturing to vibrant red in early fall then persisting until spring,
- (b) evergreen, fine textured leaves which retain lustrous green coloration even when plant is heavily berried,
- (c) produces an erect narrow symmetrical pyramidal crown without extensive shearing,
- (d) environmental tolerance equivalent to *I. opaca*.



# ABSTRACT

XIA YEN is a distinctive new evergreen holly distinguished from all other forms of *Ilex* known to me in that it combines a unique combination of desirable landscape and production traits from *Ilex opaca* and *Ilex cassine*. Plants have distinctive lustrous leaves, produce an erect narrow symmetrical crown without extensive shearing, and have the environmental tolerances of the *Ilex opaca* parent. Xia Yen is being marketed bearing the DIXIE STAR HOLLY trademark.